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# Report of the International Law Commission on the work of its sixty-eighth session

## Report of the Sixth Committee

*Rapporteur*: Mr. Isaias **Medina** (Bolivarian Republic of Venezuela)

## I. Introduction

1. The item entitled "Report of the International Law Commission on the work of its sixty-eighth session" was included in the provisional agenda of the seventy-first session of the General Assembly pursuant to Assembly resolution 70/236 of 23 December 2015.

2. At its 2nd plenary meeting, on 16 September 2016, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 20th to 30th and 33rd meetings, from 24 to 28 October and from 1 to 3 and 11 November 2016. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its sixty-eighth session (A/71/10).

5. The Chair of the International Law Commission at its sixty-eighth session introduced the report of the Commission on the work of that session: chapters I to VI and XIII at the 20th meeting, on 24 October, chapters VII to IX at the 24th meeting, on 27 October, and chapters X to XII at the 27th meeting, on 1 November.

[1] A/C.6/71/SR.20, A/C.6/71/SR.21, A/C.6/71/SR.22, A/C.6/71/SR.23, A/C.6/71/SR.24, A/C.6/71/SR.25, A/C.6/71/SR.26, A/C.6/71/SR.27, A/C.6/71/SR.28, A/C.6/71/SR.29, A/C.6/71/SR.30 and A/C.6/71/SR.33.



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# II. Consideration of proposals

## A. Draft resolution A/C.6/71/L.26

6. At the 33rd meeting, on 11 November, the representative of Peru, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-eighth session" (A/C.6/71/L.26).

7. At the same meeting, the Committee adopted draft resolution A/C.6/71/L.26 without a vote (see para. 11, draft resolution I).

8. After the adoption of the draft resolution, the representative of Algeria made a statement of position.

## B. Draft resolution A/C.6/71/L.31

9. At the 33rd meeting, on 11 November, the representative of Slovakia, on behalf of the Bureau, introduced a draft resolution entitled "Protection of persons in the event of disasters" (A/C.6/71/L.31).

10. At the same meeting, the Committee adopted draft resolution A/C.6/71/L.31 without a vote (see para. 11, draft resolution II).

# III. Recommendation of the Sixth Committee

11. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

## Draft resolution I
## Report of the International Law Commission on the work of its sixty-eighth session

*The General Assembly*,

*Having considered* the report of the International Law Commission on the work of its sixty-eighth session,[1]

*Emphasizing* the importance of furthering the progressive development and codification of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

*Recognizing* the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development and codification of international law,

*Recalling* the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

*Recalling also* the role of Member States in submitting proposals for new topics for the consideration of the International Law Commission, and noting in this regard the recommendation of the Commission that such proposals be accompanied by a statement of reasons,

*Reaffirming* the importance for the successful work of the International Law Commission of the information provided by Member States concerning their views and practice,

*Recognizing* the importance of the work of the special rapporteurs of the International Law Commission,

*Welcoming* the holding of the International Law Seminar, and noting with appreciation the voluntary contributions made to the United Nations Trust Fund for the International Law Seminar,

*Acknowledging* the importance of facilitating the timely publication of the *Yearbook of the International Law Commission* and of eliminating the backlog,

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[1] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10).

[2] Resolution 2625 (XXV), annex.

*Stressing* the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

*Wishing* to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

*Welcoming* initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in General Assembly resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the Assembly,

1. *Takes note* of the report of the International Law Commission on the work of its sixty-eighth session;[1]

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its sixty-eighth session, and notes in particular:

(a) The completion of the second reading of the draft articles on the protection of persons in the event of disasters with the adoption of an entire set of draft articles on the topic;[3]

(b) The completion of the first reading of the draft conclusions on identification of customary international law with the adoption of an entire set of draft conclusions on the topic;[4]

(c) The completion of the first reading of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties with the adoption of an entire set of draft conclusions on the topic;[5]

3. *Recommends* that the International Law Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee;

4. *Draws the attention* of Governments to the importance for the International Law Commission of having their views by 31 January 2017 on the various aspects of the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report, regarding:

(a) Crimes against humanity;

(b) Protection of the atmosphere;

(c) Provisional application of treaties;

(d) *Jus cogens*;

(e) Immunity of State officials from foreign criminal jurisdiction;

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[1] *See Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), chap. IV, sect. E.

[4] Ibid., chap. V, sect. C.

[5] Ibid., chap. VI, sect. C.

5. *Also draws the attention* of Governments to the importance for the International Law Commission of having their comments and observations by 1 January 2018 on the draft conclusions on the topics "Identification of customary international law" and "Subsequent agreements and subsequent practice in relation to the interpretation of treaties", adopted on first reading by the Commission at its sixty-eighth session;[6]

6. *Takes note* of paragraphs 306 to 313 of the report of the International Law Commission and notes, in particular, the inclusion of the topics "The settlement of international disputes to which international organizations are parties" and "Succession of States in respect of State responsibility" in the long-term programme of work of the Commission,[7] as well as the recommendation of the Commission that the potential topics identified in the memorandum by the Secretariat concerning "Possible topics for consideration taking into account the review of the list of topics established in 1996 in the light of subsequent developments"[8] be further considered by the Working Group on the Long-term Programme of Work at the sixty-ninth session of the Commission;

7. *Recalls* that the seat of the International Law Commission is at the United Nations Office at Geneva;

8. *Takes note* of the comments of the International Law Commission on the possibility of holding one half session in the next quinquennium in New York, as presented in paragraphs 323 to 326 of its report, and endorses its recommendation that the first part of the seventieth session of the Commission be held in New York, which will coincide with the commemoration of the seventieth anniversary of the Commission;

9. *Takes note with appreciation* of the recommendations of the International Law Commission, contained in paragraphs 327 to 332 of its report, that a seventieth anniversary event be held during its seventieth session, in 2018, at meetings in New York and in Geneva, that a report on those meetings be discussed at the annual meeting of the Legal Advisers in New York and that the anniversary event lead to a publication;

10. *Takes note* of paragraph 333 of the report of the International Law Commission, and requests the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002;

11. *Welcomes* the efforts of the International Law Commission to improve its methods of work,[9] and encourages the Commission to continue this practice;

12. *Invites* the International Law Commission to continue to take measures to enhance its efficiency and productivity and to consider making proposals to Member States to that end;

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[6] Ibid., paras. 60 and 73.

[7] Ibid., para. 308.

[8] A/CN.4/679/Add.1.

[9] *See Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 370-388.

13. *Encourages* the International Law Commission to continue to take cost-saving measures at its future sessions, without prejudice to the efficiency and effectiveness of its work;

14. *Takes note* of paragraph 347 of the report of the International Law Commission, and decides that the next session of the Commission shall be held at the United Nations Office at Geneva from 1 May to 2 June and from 3 July to 4 August 2017;

15. *Stresses* the desirability of further enhancing the dialogue between the International Law Commission and the Sixth Committee, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission throughout the year;

16. *Encourages* delegations, during the debate on the report of the International Law Commission, to continue to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;

17. *Encourages* Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;

18. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

19. *Takes note* of paragraphs 348 to 351 of the report of the International Law Commission with regard to cooperation and interaction with other bodies, and encourages the Commission to continue the implementation of articles 16 (e), 25 and 26 of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

20. *Notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

21. *Reaffirms* its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing assistance to the International Law Commission, including in the preparation of memorandums and studies on topics on the agenda of the Commission, and takes note of the requests of the Commission for the Secretariat to prepare memorandums on the topics "Identification of customary international law" and "Provisional application of treaties" contained in paragraphs 301 and 302 of the report of the Commission;

22. *Also reaffirms* its previous decisions concerning the documentation and summary records of the International Law Commission;[10]

23. *Welcomes* the institutionalization of the practice of the Secretariat to include the provisional summary records in English and French on the website relating to the work of the International Law Commission;

24. *Also welcomes* the efforts of the Secretariat in seeking to ensure timely and efficient processing of the documents of the International Law Commission, and encourages the Secretariat to institutionalize the experimental measures taken during the sixty-eighth session of the Commission to streamline the editing of those documents;

25. *Takes note* of paragraphs 338 to 340 of the report of the International Law Commission, recalls the paramount importance of multilingualism as set forth in General Assembly resolution 69/324 of 11 September 2015 on multilingualism, underlines the importance of having the documents of the Commission published in due time in the six official languages of the United Nations, and to this end encourages special rapporteurs to submit their reports within the time limits specified by the Secretariat;

26. *Takes note* of paragraphs 334 and 335 of the report of the International Law Commission, underlines the importance of the publications of the Codification Division to the work of the Commission, and reiterates its request that the Secretary-General continue to publish the *Work of the International Law Commission* in all six official languages at the beginning of each quinquennium, the *Reports of International Arbitral Awards* in English or French and the *Summaries of the Judgments, Advisory Opinions and Orders of the International Court of Justice* in all six official languages every five years;

27. *Stresses* the need to expedite the preparation of the summary records of the International Law Commission, and welcomes the continuation of the measures taken to streamline the processing of summary records during the sixty-fifth session of the Commission,[11] which have led to a more rational use of resources, and expresses its satisfaction that the summary records of the Commission, constituting *travaux préparatoires* in the progressive development and codification of international law, will not be subject to arbitrary length restrictions;

28. *Takes note* of paragraph 342 of the report of the International Law Commission, stresses the unique value of the *Yearbook of the International Law Commission*, and requests the Secretary-General to ensure its timely publication in all official languages;

29. *Expresses its appreciation* to Governments that have made voluntary contributions to the trust fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the trust fund;

30. *Takes note* of paragraph 343 of the report of the International Law Commission, expresses its satisfaction with the remarkable progress achieved in the

[10] See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly.

[11] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10* (A/68/10), para. 183.

past few years in reducing the backlog of the *Yearbook of the International Law Commission* in all six languages, welcomes the efforts made by the Division of Conference Management of the United Nations Office at Geneva, especially its Editing Section, in effectively implementing relevant resolutions of the General Assembly calling for the reduction of the backlog, encourages that Division to provide continuous necessary support to the Editing Section in advancing the *Yearbook of the International Law Commission*, and requests that updates on progress made in this respect be provided to the Commission on a regular basis;

31. *Welcomes* the continuous efforts of the Codification Division to maintain and improve the website relating to the work of the International Law Commission;

32. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants representing the principal legal systems of the world, including in particular those from developing countries, will be given the opportunity to attend the Seminar, as well as delegates to the Sixth Committee, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;

33. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue to consider ways to improve the structure and content of the Seminar;

34. *Underlines* the importance of the records and topical summary of the debate in the Sixth Committee for the deliberations of the International Law Commission, and in this regard requests the Secretary-General to forward to the Commission, for its attention, the records of the debate on the report of the Commission at the seventy-first session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

35. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;

36. *Also requests* the Secretariat to make the complete report of the International Law Commission available as soon as possible after the conclusion of the session of the Commission for the consideration of Member States with due anticipation and no later than the prescribed time limit for reports in the General Assembly;

37. *Encourages* the International Law Commission to continue to consider ways in which specific issues on which the views of Governments would be of particular interest to the Commission could be framed so as to help Governments to have a better appreciation of the issues on which responses are required;

38. *Recommends* that the debate on the report of the International Law Commission at the seventy-second session of the General Assembly commence on 23 October 2017.

## Draft resolution II
## Protection of persons in the event of disasters

*The General Assembly*,

*Having considered* chapter IV of the report of the International Law Commission on the work of its sixty-eighth session,[1] which contains the draft articles on the protection of persons in the event of disasters,[2]

*Noting* that the Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles,[3]

*Emphasizing* the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

*Noting* that the subject of the protection of persons in the event of disasters is of major importance in the relations of States,

*Taking into account* views and comments expressed in the Sixth Committee on chapter IV, on the protection of persons in the event of disasters, of the report of the Commission,

1. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

2. *Takes note* of the draft articles on the protection of persons in the event of disasters, presented by the Commission,[2] and invites Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of these articles;[3]

3. *Decides* to include in the provisional agenda of its seventy-third session an item entitled "Protection of persons in the event of disasters".

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[1] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10).
[2] Ibid., para. 48.
[3] Ibid., para. 46.